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ENERGY HOLDINGS LLC, and MACPHERSON
OIL COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CENTER FOR BIOLOGICAL
DIVERSITY, and SIERRA CLUB, non-
profit corporations,

Petitioners,

vs.

CALIFORNIA DEPARTMENT OF
CONSERVATION, DIVISION OF OIL,
GAS, AND GEOTHERMAL
RESOURCES; and DOES 1 through 20,
inclusive,

Respondents.

AERA ENERGY LLC, BERRY
PETROLEUM COMPANY LLC,
CALIFORNIA RESOURCES
CORPORATION, CHEVRON U.S.A.
INC., FREEPORT-MCMORAN OIL &
GAS LLC, LINN ENERGY HOLDINGS
LLC, and MACPHERSON OIL
COMPANY,

Respondents-in-Intervention.

Case No. RG15769302

Assigned for all purposes to the Hon. George C.
Hernandez, Dept. 17

**SEPARATE STATEMENT OF
UNDISPUTED FACTS IN SUPPORT OF
MOTION FOR SUMMARY
ADJUDICATION BY AERA ENERGY
LLC, BERRY PETROLEUM COMPANY
LLC, CALIFORNIA RESOURCES
CORPORATION, CHEVRON U.S.A. INC.,
FREEPORT-MCMORAN OIL & GAS LLC,
LINN ENERGY HOLDINGS LLC, AND
MACPHERSON OIL COMPANY**

*[Motion and Declaration, filed concurrently;
Proposed Order, lodged concurrently]*

Action Filed: May 7, 2015
Trial Date: None set

Respondents-in-Intervention, Aera Energy LLC, Berry Petroleum Company LLC, California Resources Corporation, Chevron U.S.A. Inc., Freeport-McMoRan Oil & Gas LLC, LINN Energy Holdings LLC, and Macpherson Oil Company (collectively “Energy Companies”) respectfully submit this Separate Statement of Undisputed Facts, together with references to supporting evidence, in support of the Motion for Summary Adjudication as to Petitioners’ First Cause of Action. Copies of all materials cited herein as supporting evidence are submitted as exhibits to the Declaration of Matthew C. Wickersham filed concurrently herewith.¹

<i>Undisputed Fact (“UF”)</i>	<i>Energy Companies’ Undisputed Material Facts and Supporting Evidence</i>	<i>Petitioners’ Response and Supporting Evidence</i>
ISSUE 1—THE FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF IS BARRED BECAUSE NO ACTUAL CONTROVERSY EXISTS		
UF No. 1	In California, Class II underground injection wells are regulated by DOGGR pursuant to a Memorandum of Agreement between DOGGR and the EPA. Declaration of Matthew C. Wickersham (“Wickersham Decl.”), Ex. A, [Code Fed. Regs., tit. 40, § 147.250].	
UF No. 2	Recently, the EPA has raised questions regarding DOGGR’s administration of the Underground Injection Control program. Wickersham Decl., Ex. B [3/2/15 CalEPA Memo.] at pp. 2–3.	
UF No. 3	Following numerous meetings and sustained dialogue with the EPA, DOGGR formally responded to the EPA’s audit on February 6, 2015. Wickersham Decl., Ex. C [2/6/15 DOGGR Ltr.].	

¹ For purposes of citation, all exhibits are attached to the Declaration of Matthew C. Wickersham, and a short description of the exhibit and any relevant pinpoint citation follows each exhibit letter.

Undisputed Fact ("UF")	Energy Companies' Undisputed Material Facts and Supporting Evidence	Petitioners' Response and Supporting Evidence
UF No. 4	<p>Among other actions, DOGGR proposed to "initiate rulemaking to establish a regulatory-compliance schedule to eliminate Class II injection into undisputedly non-exempt aquifers statewide."</p> <p>Wickersham Decl., Ex. C [2/6/15 DOGGR Ltr.] at p. 6.</p>	
UF No. 5	<p>DOGGR's rulemaking came to fruition with the promulgation of the emergency Aquifer Exemption Compliance Schedule Regulations on April 1, 2015.</p> <p>Wickersham Decl., Ex. D [4/2/15 Press Release].</p>	
UF No. 6	<p>On May 7, 2015, Petitioners filed their Complaint for Declaratory and Injunctive Relief and Verified Petition for Writ of Mandate ("Petition") with two causes of action intended to nullify the Aquifer Exemption Compliance Schedule Regulations.</p> <p>Wickersham Decl., Ex. E [Petition].</p>	
UF No. 7	<p>Petitioners are seeking declaratory relief under the California Administrative Procedure Act based on allegations that the Aquifer Exemption Compliance Schedule Regulations were not justified by a true emergency.</p> <p>Wickersham Decl., Ex. E [Petition] at pp. 13:18–15:3.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	

<i>Undisputed Fact ("UF")</i>	<i>Energy Companies' Undisputed Material Facts and Supporting Evidence</i>	<i>Petitioners' Response and Supporting Evidence</i>
UF No. 8	<p>Petitioners have requested a writ of mandate "ordering DOGGR to take all actions necessary and available to it to immediately meet its non-discretionary duties to prohibit illegal injection of wastewater into protected aquifers."</p> <p>Wickersham Decl., Ex. E [Petition] at pp. 15:4–16:28.</p>	
UF No. 9	<p>The Petition recognizes that an "actual controversy" is an essential element of the declaratory relief cause of action.</p> <p>Wickersham Decl., Ex. E [Petition] at p. 14:17–18.</p>	
UF No. 10	<p>Regarding the first cause of action, Petitioners allege that DOGGR has violated the Administrative Procedure Act "by employing regulatory emergency powers to allow admittedly illegal injection."</p> <p>Wickersham Decl., Ex. E [Petition] at p. 2:22–23.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	
UF No. 11	<p>Petitioners allege that "[t]he true emergency is the ongoing contamination of California's underground supply of water [and that] DOGGR has a nondiscretionary duty and legal authority to prevent [the alleged contamination]."</p> <p>Wickersham Decl., Ex. E [Petition] at pp. 2:25–26, 14:27–15:3.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	

<i>Undisputed Fact ("UF")</i>	<i>Energy Companies' Undisputed Material Facts and Supporting Evidence</i>	<i>Petitioners' Response and Supporting Evidence</i>
UF No. 12	<p>Based on the alleged "true emergency," Petitioners seek the prohibition of "further illegal contamination under the guise of DOGGR's sham 'emergency' regulatory scheme."</p> <p>Wickersham Decl., Ex. E [Petition] at p. 3:1-2.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	
UF No. 13	<p>Petitioners have asked this Court to "vacate the emergency regulations" because "DOGGR continues to fail in implementing its regulatory duties."</p> <p>Wickersham Decl., Ex. E [Petition] at p. 3:4-6.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	
UF No. 14	<p>To justify declaratory relief, Petitioners allege that they will be "irreparably harm[ed]" because of "DOGGR's failure to enforce and comply with the law and because of the ensuing environmental damage caused by DOGGR's illegal authorization of oil wastewater injection into protected aquifers."</p> <p>Wickersham Decl., Ex. E [Petition] at pp. 14:27-15:3.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	

<i>Undisputed Fact ("UF")</i>	<i>Energy Companies' Undisputed Material Facts and Supporting Evidence</i>	<i>Petitioners' Response and Supporting Evidence</i>
UF No. 15	<p>Petitioners explained at the hearing on the Motion for Preliminary Injunction that the "first cause of action" for declaratory relief is about the "legal framework for review," which is alleged to be "review first before allowing anything to go into a protected aquifer."</p> <p>Wickersham Decl., Ex. F [Motion for Preliminary Injunction Hearing Transcript] at p. 11:13–17.</p> <p>The Energy Companies deny these arguments, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	
UF No. 16	<p>At the hearing on the Motion for Preliminary Injunction, Petitioners described the "crux of the case" as Petitioners' "concern that injections are occurring into protected aquifers where no exemptions have been obtained."</p> <p>Wickersham Decl., Ex. F [Motion for Preliminary Injunction Hearing Transcript] at p. 13:15–18.</p> <p>The Energy Companies deny these arguments, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	
UF No. 17	<p>At the Demurrer hearing, Petitioners stated that the declaratory relief cause of action "could be a cause of action for our second claim" for mandamus relief.</p> <p>Wickersham Decl., Ex. G [Demurrer Hearing Transcript] at p. 67:21–22.</p>	

<i>Undisputed Fact ("UF")</i>	<i>Energy Companies' Undisputed Material Facts and Supporting Evidence</i>	<i>Petitioners' Response and Supporting Evidence</i>
UF No. 18	<p>At the hearing on the Motion for Preliminary Injunction, Petitioners raised the prospect that "emergency findings themselves" were insufficient to justify the Aquifer Exemption Compliance Schedule Regulations.</p> <p>Wickersham Decl., Ex. F [Motion for Preliminary Injunction Hearing Transcript] at p. 18:16–17.</p> <p>The Energy Companies deny these arguments, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	
UF No. 19	<p>Petitioners have challenged DOGGR's findings that an immediate cessation of underground injection activities in California would (1) cause an "abrupt disruption" to the oil industry in California and (2) jeopardize the federal government's ongoing approval of the State's UIC Program."</p> <p>Wickersham Decl., Ex. E [Petition] at pp. 12:22–28, 13:12–14.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	
UF No. 20	<p>Petitioners allege that neither of DOGGR's emergency justifications "addresses or concerns public welfare, health or safety."</p> <p>Wickersham Decl., Ex. E [Petition] at p. 12:27–28.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	

<i>Undisputed Fact ("UF")</i>	<i>Energy Companies' Undisputed Material Facts and Supporting Evidence</i>	<i>Petitioners' Response and Supporting Evidence</i>
UF No. 21	<p>The Court ruled in the order denying Petitioners' Motion for Preliminary Injunction that "enforcement via the emergency regulations . . . appears likely to minimize collateral harm to the public, including the impact on California's economy of an immediate, across-the-board shut-down of injection wells."</p> <p>Wickersham Decl., Ex. H [Order Denying Motion for Preliminary Injunction] at p. 3.</p>	
UF No. 22	<p>The Court ruled in the order denying Petitioners' Motion for Preliminary Injunction that "the threat that the EPA will rescind California's 'primacy' . . . could result in less effective enforcement in the near-term."</p> <p>Wickersham Decl., Ex. H [Order Denying Motion for Preliminary Injunction] at p. 3.</p>	
UF No. 23	<p>At the hearing on the Motion for Preliminary Injunction, Petitioners argued that their "position is the real public health emergency is the drought and the harm caused by the regulations allowing continued contamination of these underground sources of drinking water."</p> <p>Wickersham Decl., Ex. F [Motion for Preliminary Injunction Hearing Transcript] at p. 18:21–25.</p> <p>The Energy Companies deny these arguments, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	

<i>Undisputed Fact ("UF")</i>	<i>Energy Companies' Undisputed Material Facts and Supporting Evidence</i>	<i>Petitioners' Response and Supporting Evidence</i>
UF No. 24	<p>At the hearing on the Motion for Preliminary Injunction, Petitioners claimed that "notwithstanding any deference the Court gives to the finding of the emergency regulations, the regulations violate the [SDWA] . . . and that fundamental flaw means regulations can be struck down no matter what."</p> <p>Wickersham Decl., Ex. F [Motion for Preliminary Injunction Hearing Transcript] at p. 20:8–12.</p> <p>The Energy Companies deny these arguments, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	
UF No. 25	<p>Petitioners have proposed the possibility of bifurcated records on the two causes of action.</p> <p>Wickersham Decl., Ex. I [Case Management Statement] at pp. 3–4.</p>	

Respectfully submitted,

Dated: December 14, 2015

GIBSON, DUNN & CRUTCHER, LLP

By: _____

Jeffrey D. Dintzer

Attorneys for Respondents-in-Intervention,
 AERA ENERGY LLC, BERRY PETROLEUM
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